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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/763,635

04/12/2002

Hans Berg

4988

3877

7590

08/04/2004

Shoemaker and Mattare
2001 Jefferson David Highway
Arlington, VA 22202

EXAMINER

VANATTA, AMY B

ART UNIT

PAPER NUMBER

3765

DATE MAILED: 08/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/763,635

Applicant(s)

BERG ET AL.

Examiner

Amy B. Vanatta

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-26 and 28-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19, 20, 22, 24-26 and 28-36 is/are rejected.
- 7) ☒ Claim(s) 21 and 23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 25, 26, and 28-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 25, lines 1-2, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Regarding claim 33, line 3, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claims 28-31 are rendered indefinite by being dependent upon a canceled claim.

In claim 28, "preferably " renders the claim indefinite because it is unclear whether the limitation(s) following the term are part of the claimed invention.

Claim 33 recites "said guide means" (last line) without proper antecedent basis. This should read as "said at least one guide element".

Claim 35 is indefinite in reciting "said guide elements" (plural), since claim 33 set forth "at least one guide element". Thus, claim 33 encompasses a single guide element, while claim 35 recites only plural guide elements. It is suggested that claim 35

be amended to recite that there are plural guide elements, or be amended to recite "said at least one guide element" rather than "said guide elements".

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 19, 20, 22, 24-26, 28 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 3029987 to Brandenberger.

DE 3029987 to Brandenberger discloses a method for leasing threads into elements of a treatment device including leasing the threads into at least one leasing comb (10), fastening the threads onto the comb (by closing the comb as shown in Fig. 5), and subsequently pulling the threads with the leasing comb through the treatment device (i.e. to the comb 7 as shown in Fig. 7). The threads are transferred to the guide elements of the comb 7 as recited in claim 19. The device disclosed by Brandenberger is a "treatment device" to the extent claimed, since the warping is a treatment procedure to the extent claimed, as is the beaming or deflecting of the yarns. The movement of the leasing comb is temporarily interrupted while the threads are transferred from the leasing comb (10) to the guide element (7) and the comb (10) is positioned with respect to the guide element (7) before the threads are transferred to the guide element (see Fig. 7). The leasing comb comprises interstices (divisions T and t) for receiving the

threads F whose arrangement corresponds to the spaces in the guide elements (see translation, page 17, lines 6-13), as in claim 22. Aligning projections (pegs 17) are in alignment with the leasing interstices, and the leasing comb is aligned with the guide elements (elements of comb 7) as in claim 22 (see Fig. 7). Regarding claim 24, the threads which are on the spools of the creel (1) as shown by Brandenberger are from a preceding treatment procedure to the extent recited in claim 24, and are pulled with the comb 10 as claimed.

Regarding claims 25-26, Brandenberger discloses an auxiliary device for leasing threads which is formed as a leasing comb (10) comprising an arrangement for the ordered fastening of the threads on the leasing comb (Figs. 5-6) and including leasing interstices (T or t) arranged next to each other for receiving threads. The leasing comb has aligning elements (17) which are designed as aligning projections (pegs 17) which may be brought into engagement with interstices in the guide elements of comb 7, as claimed. The recitation of the use or function of the aligning elements "for aligning the leasing comb onto guide elements" does not further define the structure of the claimed apparatus over Brandenberger, since the device of Brandenberger can so function and since the comb 10 has aligning elements 17 which align the comb with the guide elements of comb 7 (translation, page 17, lines 4-13). It is noted that the guide elements are not claimed in claim 25. Regarding claim 32, the projections 17 form holding elements as claimed, for the temporary receiving and holding of the leasing comb in receiving devices in the guide elements of comb 7 (see Fig. 7). Regarding claim 33, Brandenberger discloses a guide element (7) and a leasing comb (10) on

Art Unit: 3765

which the threads are fastenable and from which the threads may be transferred as claimed. The leasing comb (10) has aligning elements (17) which function to align the leasing comb with the guide means, and are capable of aligning the leasing comb "on" the guide means to the extent claimed. The leasing comb (10) of Brandenberger is passed over the guide means (7) and at this point is capable of functioning as recited in claim 33. The spaces between the elements of the comb 7 provide receiving devices for the temporary holding of the comb 10 as in claim 34 (see Fig. 7). The device includes at least two mounts as in claim 36, the threads of the mounts being leasable and guideable as in claims 3 (see Figs. 1-3).

5. Claims 25, 26, 28, and 32-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Lichtschlag (US 4,528,732).

Regarding claim 25, Lichtschlag discloses an auxiliary device for leasing threads into guide elements. The auxiliary device includes a leasing comb (25) comprising an arrangement for the ordered fastening of the threads on the leasing comb (25), and the leasing comb (25) has aligning elements (41,41') for aligning the leasing comb onto the guide elements (of guide 32). The leasing comb (25) has a plurality of leasing interstices arranged next to one another (see interstices or spaces between elements 41,41'), as in claim 26. The aligning elements (41,41') are designed as aligning projections which may be brought into engagement with interstices in comb the guide elements (see interstices between elements 48,48'), as in claim 28. Regarding claim 32, the leasing comb (25) has holding elements (41,41') for the temporary receiving and

Art Unit: 3765

holding of the leasing comb in receiving devices (see spaces between elements 48,48') in the guide elements.

Regarding claim 33, Lichtschlag discloses a device for treating threads including at least one guide element (32), through which the threads may be guided, and at least one leasing comb (25), on which the threads are fastenable in an ordered manner and from which the threads may be transferred by the at least one guide element (32). The leasing comb (25) has aligning elements (41,41') for aligning the leasing comb (25) on the guide means (32). For each guide element (32) there is provided at least one receiving device (48,48') for the temporary holding of the leasing comb, as in claim 34. The at least one guide element (32) is movable out of the thread path (by moving the guide element 32 upwards or downwards via the elevating mechanism 47), as in claim 35. The device has at least two mounts for receiving warp beams (i.e. the "mounts" attach warp beams 12 and 13 to the frame 11, as shown in Fig. 1). The threads of at least one mount (e.g. the threads 17 of the mount holding beam 12) are leasable into a leasing comb, while the threads of another mount (e.g. the threads 20 of the mount for beam 15) are guidable through the device, as in claim 36.

Allowable Subject Matter

6. Claims 21 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. -

7. Claim 29-31 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

8. Applicant's arguments filed 4/28/04 have been fully considered but they are not persuasive.

Applicant argues that DE 3029987 does not relate to a method for leasing threads into elements of a treatment device, since there is no treatment device disclosed in this patent. The Examiner takes the position that the warping machine disclosed in DE 3029987 forms a treatment device to the extent claimed. The warping of the threads is a form of "treatment" since the threads undergo specific processing; that is, the beaming, winding, and deflection of the threads can be considered treatment of the threads. The claimed "treatment" requires no specific steps or structural modification of the threads which defines over the warping or beaming which the threads undergo in the process of DE 3029987.

With respect to claims 25 and 33, Applicant argues that the pegs 17 cannot be used for alignment of the leasing comb onto the guide elements. Firstly, it is noted that the guide elements are not claimed in claim 25, but rather they are recited only functionally. The Examiner contends that the aligning elements 17 do function to align the leasing comb 10 with the guide elements (in comb 7) since the pegs 17 are spaced so as to align with the spacing ("z") in the warper comb (see translation, page 17, lines

Art Unit: 3765

6-13). Thus, the aligning elements 17 ensure that the threads are properly placed (i.e. "aligned") in the comb 7 (i.e., in the guide elements of comb 7). Claims 25 and 33 recite functionally that the aligning elements are for aligning the leasing comb "onto" or "on" the guide elements. This function is capable of being performed by the device of Brandenberger since the aligning elements 17 align the comb with the guide elements of comb 7, and the comb is passed over the guide elements (of comb 7) as it is moved. Although it is not disclosed that the comb is aligned "onto" or "on" the guide elements, the comb is "on" the guide elements in a broad sense since it is passed over the guide elements, and at this point could be moved into contact with the guide elements, thus being "on" or aligned "onto" the guide elements as claimed. Thus, the claimed function is capable of being performed by the device of Brandenberger.

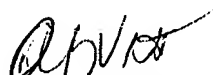
Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy B. Vanatta whose telephone number is 703-308-2939. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 703-305-1025. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

Art Unit: 3765

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0861.


Amy B. Vanatta
Primary Examiner
Art Unit 3765